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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,199	06/27/2003	James A. Limburg	J-3684	7622
28165	7590	10/26/2004	EXAMINER	
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236				TSIDULKO, MARK
		ART UNIT		PAPER NUMBER
		2875		

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/608,199	LIMBURG ET AL.	
	Examiner Mark Tsidulko	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 01 October 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-14 and 16-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 9-14 and 16-50 is/are allowed.
- 6) Claim(s) 1-4, 6 and 11 is/are rejected.
- 7) Claim(s) 5,7 and 8 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 September 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

The submission of amendment filed on 10/01/04 is acknowledged. At this point claims 1, 8, 9, 12, 16, 17 and 18 have been amended, claim 15 has been canceled, new claims 41-50 have been added and the remaining claims left unchanged. Thus, claims 1-14, 16-50 are at issue in the instant application.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Meltzer (US 2002/0080601).

Referring to Claims 1 and 2 Meltzer discloses (Fig.2) a device for simulating an open fire including a housing [5] having a base and a sidewall, defining an enclosure, a wall positioned in the enclosure between a light source [2] and a fan [6] and forming an intake chamber (not indicated by number) that has inlet opening [8] being in communication with an ambient air, flow outlet [10] having an opening around (not indicated by number) being in communication with an ambient air and opening and between the intake and flow outlet chambers (not indicated by number).

Referring to Claim 6 Meltzer discloses (Fig.2) a plane of the base extending perpendicularly to a plane of the sidewall.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meltzer (US 2002/0080601) in view of Lin (US 6,454,425).

Meltzer discloses the instant claimed invention except for that a sidewall is removably and frictionally connected to the base.

Lin (Fig.5) discloses a candle simulating device wherein a sidewall [1] is an open ended cylinder, removably and frictionally connected to the circular base [15] (col.2, lines 53-65).

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the device of Meltzer having sidewall removably connected to the base, as taught by Lin in order to simplify assembling and disassembling of the device.

***Allowable Subject Matter***

Claims 5, 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The following is an examiner's statement of reasons for allowance:

Referring to Claim 5 the prior art of record fails to show a flameless candle wherein a sidewall is wax covered.

Referring to Claim 7 the prior art of record fails to show a flameless candle wherein a plane of the base extends generally perpendicular to the plane of the wall.

Referring to Claim 8 the prior art of record fails to show a flameless candle wherein a wall includes one end connected to the base.

Claims 9-14 and 16-50 are allowed.

The following is an examiner's statement of reasons for allowance:

Referring to Claim 9 the prior art of record fails to show a flameless candle wherein a wall is positioned between the two opposing sides of the base.

Claim 10 is objected as claim depended on claim 9.

Referring to Claim 12 the prior art of record fails to show a flameless candle having a lid covering the air intake and air outflow shambers.

Claims 13 and 14 are objected as claim depended on claim 12.

Referring to Claim 16 the prior art of record fails to show a flameless candle having a wick and a fragrance source positioned in the air stream created by the fan.

Claim 17 is objected as claim depended on claim 16.

Referring to Claim 18 the prior art of record fails to show a flameless candle wherein the wall has another opening and a light source positioned in this opening.

Referring to Claim 19 the prior art of record fails to show a flameless candle having a wick positioned in the air stream and a wax covered sidewall.

Claims 20-33 are allowed as claims depended on claim 19.

Referring to Claim 34 the prior art of record fails to show a flameless candle having a wax covered housing and a lid positioned in the opening.

Claims 35-40 are allowed as claims depended on claim 34.

Referring to Claims 41 and 47 the prior art of record fails to show a flameless candle wherein a sidewall is wax covered.

Claims 42 and 43 are allowed as claims depended on claim 41.

Claims 48-50 are allowed as claims depended on claim 47.

Referring to Claim 44 the prior art of record fails to show a flameless candle having a fragrance source positioned in the air stream.

Claims 45 and 46 are allowed as claims depended on claim 44.

#### *Response to Arguments*

Applicant's arguments filed 10/01/04 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not disclose an air intake chamber, as air outflow chamber and an opening proximate an end of the housing in communication with ambient air and the intake chamber and opening proximate the end of the housing and the air outflow chamber.

In response, Examiner would like to direct Applicant's attention to the fact, that Meltzer discloses (see Fig.2) an opening [8] located at the lower end of the housing, the air intake chamber (not indicated by number) located between the base of the housing and wall above the

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fan, an opening [10] located at the upper end of the housing, above the air outflow chamber (not indicated by number) located between an upper end of the housing and the wall above the fan.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571)272-2384. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

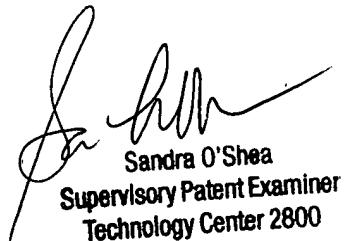
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.T.

1. October 21, 2004



Sandra O'Shea  
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